

UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

1625 South 900 West • PO Box 30408 • Salt Lake City UT 84130-0408 • (801) 977-6800 • Fax 977-6888
website: www.abc.utah.gov

PACKAGE AGENCY CONTRACT **APPLICATION CHECKLIST**

Dear Applicant:

The items below should be completed and submitted by the **10th of the month** or earlier, so that your application can be processed in a timely manner. All licensing requirements must be fully satisfied in order to complete your application. You will then be notified of the next monthly Utah Alcoholic Beverage Control Commission meeting when your application will be considered for issuance of a license. We recommend that a representative attend the meeting.

1. Completed application form (enclosed).
2. Ownership entity organizational papers for business:
 - a) if a corporation, submit a copy of the articles of incorporation;
 - b) if a partnership, submit a copy of the written agreement;
 - c) if a limited liability company, submit a copy of the articles of organization.
3. Criminal history background check information (see application form).
4. Copy of local business license.
5. Local consent from either city/town council or county commission, whichever is applicable. (Form enclosed)
6. Package agency bond requirement for types 2 & 3, consignment only inventory, please complete bond application (form provided separately). For types 1,4,5 non-consignment inventory, please submit \$1,000 cash or corporate surety bond (form enclosed).
7. Certificate of public liability insurance.
8. Scaled floor plan (8-1/2" x 11") of package agency, highlighting areas for delivery, storage and sale of liquor.
9. \$100 application fee (non-refundable). Make check payable to UDABC.
10. Evidence of proximity to schools, churches, libraries, playgrounds, and/or parks (600'). See #19 on application.

Enclosed for your information are copies of statutes and rules pertaining to package agencies, as well as a list of factors considered in the evaluation of contract applications. If you have questions, contact the licensing and compliance section at (801) 977-6800.

**UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
APPLICATION FOR
PACKAGE AGENCY CONTRACT**

1. Please indicate the type(s) package agency you are applying for:

- ☐ *Type 1 Located in a Hotel, ski lodge, summer recreational area, or other resort environment to serve the general public and guests.
- ☐ *Type 2 In conjunction with another business where the primary source of income to the operator is not from the sale of liquor (e.g. small grocery stores in rural communities).
- ☐ *Type 3 Not in conjunction with another business, but is for the sole purpose of selling liquor.
- ☐ *Type 4 Located in a facility for the purpose of selling and delivering liquor to tenants or occupants of specific rooms which have been leased, rented, or licensed within the same facility, and is not open to the general public (e.g. hotel room service or private suites at sports arenas).
- ☐ *Type 5 Located within a winery, brewery, or distillery licensed by the commission.

2. Name of Business: _____

3. Applicant/Owner of business: _____

4. Agency location: _____
Street City State Zip

5. Mailing Address: _____
Street City State Zip

6. Agency Phone: _____ **Other Phone:** _____

7. Name/Title of package agent: _____

8. Owner of real property & building. _____

9. Ownership: Check appropriate box and provide the requested information in the space below.
(add additional sheets if necessary)

- [] Applicant is an **individual:** List below information for: (a) Individual
(b) All Managers
- [] Applicant is a **partnership:** List below information for: (a) All Partners
(b) All Managers
- [] Applicant is a **corporation:** List below information for: (a) Any Stockholder owning at least 20% of the corporation
(b) All Corporate officers and Directors
(c) All Managers
- [] Applicant is a **limited liability company (LLC):**
List below information for: (a) Any members owning at least 20% of the company
(b) All Managers

TITLE _____ NAME _____ HOME ADDRESS _____

HOME PHONE# _____ DR LIC# _____ SS# _____ DOB _____ % OWNED _____

Are you a United States Citizen? _____ If no, must attach a copy of residency status.

TITLE _____ NAME _____ HOME ADDRESS _____

HOME PHONE# _____ DR LIC# _____ SS# _____ DOB _____ % OWNED _____

Are you a United States Citizen? _____ If no, must attach a copy of residency status.

TITLE _____ NAME _____ HOME ADDRESS _____

HOME PHONE# _____ DR LIC# _____ SS# _____ DOB _____ % OWNED _____

Are you a United States Citizen? _____ If no, must attach a copy of residency status.

10. Criminal History. The law prohibits persons who have been convicted of certain crimes from being in the alcoholic beverage business. This applies to any applicant, proprietor, partner, managing agent, director, or officer of the business. This also applies to any stockholder owning at least 20% of the corporation stock, or if a limited liability company, any member owning at least 20% of the company. Please list all criminal offenses other than minor traffic offenses of which you or any of these persons (including persons listed in paragraph 9) have ever been convicted.

<u>NAME</u>	<u>CRIMINAL OFFENSE</u>	<u>DATE OF CONVICTION</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

In addition, a criminal history **background check** must be furnished on each person listed above and in paragraph 9. This may be done as follows:

a. Utah residents: If any person listed has been a **resident of Utah for at least two years**, he/she shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the Utah Bureau of Criminal Identification.

b. Non Residents: Out of state residents or persons who have resided in Utah for less than two years shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the **Federal Bureau of Investigation (F.B.I.)**.

An informed consent and release of liability form is included with this application.

Fingerprint cards are available at law enforcement agencies. You may download the fingerprint card at this web address: <http://www.fbi.gov/hq/cjisd/pdf/fpcardb.pdf>

Submit the form(s) to the DABC with a processing fee of:

- \$15.00 per card for BCI background checks, or
- \$34.25 per card for FBI background checks.

In the case of an undue delay in the processing of an F.B.I. criminal background check, here are the rules and procedures for obtaining a third-party national background check: An application that requires F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

- 1). the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the F.B.I. criminal history background report(s);
- 2). the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in the application that would disqualify the applicant from applying for and holding the license, permit, or package agency;
- 3). the applicant has submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s) by the F.B.I.
- 4). the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which an F.B.I. background check is required; and
- 5). the applicant stipulates in writing that if an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

A suggested attestation/stipulation letter that satisfies the above requirements is enclosed.

A third-party national criminal background check can be obtained by;

- searching the yellow pages under Background Screening
- searching the internet under Background Screening or Background Checks

Because the DABC is State Agency, we cannot recommend any one background screening service over another. It is your responsibility however, to obtain the most complete, nationwide, criminal history available for the application process.

11. Have you as an applicant, or any proprietor, partner, managing agent, director, officer or stockholder owning at least 20% corporation stock, or if a limited liability company, any member owning at least 20% of the company had a state alcoholic beverage license, permit or agency revoked within the last three years? _____ If so, please explain. _____

12. Type of business agency to be associated with: _____

13. List other alcoholic beverage licenses held by applicant/principals: _____

14. Date applicant opened for business (or projection): _____

15. Proposed days and hours of agency operation: _____
16. Square footage of retail space, including storage: _____
17. Number of parking stalls: _____
18. Number of guest rooms, if hotel: _____ Occupancy rate: _____
19. List any private or public schools, churches, public libraries, public playgrounds or parks located within 600' of the package agency premises:

Property	Address	Measured Distance
_____	_____	_____
_____	_____	_____
_____	_____	_____

20. Applicant agrees to immediately notify the department of any change in ownership, and if a corporation, any change in the officers/directors, and understands that failure to do so may result in immediate suspension of the package agency contract.

21. By signing below, the applicant attests that:

a) the applicant is in compliance with all federal and state laws pertaining to the payment of taxes and contributions to unemployment and insurance funds. The following are tax identification numbers of the business.

- i. State Sales Tax #: _____
- ii. State Payroll Withholding Tax #: _____
- iii. State Dept. of Workforce Services #: _____
- iv. Federal Taxpayer Identification #: _____

b) the proprietor/applicant is at least 21 years of age.

c) consent is granted to representatives of the Alcoholic Beverage Control Department, Commission, State Bureau of Investigation (Bureau of Alcoholic Beverage Law Enforcement), and other law enforcement agencies to be admitted immediately and permitted without hindrance or delay to inspect the entire premises and all records of the package agency.

d) he/she has read and will abide by the provisions of Title 32A, Utah Code, and all rules of the commission and directives of the Department of Alcoholic Beverage Control; and understands that failure to adhere thereto or to no longer possess the qualifications for the granting of a package agency contract may result in suspension or revocation of the package agency contract and forfeiture of compliance bond.

e) the applicant does not and will not discriminate against persons on the basis of race, color, sex, religion, ancestry, or national origin.

22. Applicant agrees as a condition of licensing that he/she has read and will abide by the provisions of the Alcoholic Beverage Control Act (Title 32A, Utah Code) and all Rules of the Commission and directives of the Department and understands that failure to adhere to them shall constitute grounds for suspension or revocation of the package agency contract and forfeiture of compliance bond.
23. The undersigned acknowledges that he/she has read & understands the statements made herein, that execution thereof is done voluntarily and by authorization of said organization; and certifies that the information provided in this application and attached hereto is true and correct.

Date: _____

Applicant/Owner of Business

Authorized Signature

Name/Title

STATE OF _____

COUNTY OF _____

Subscribed & sworn to before me

this _____ day of _____, _____.

Notary Public

SEAL:

“PACKAGE AGENCY CONTRACT ”

LOCAL CONSENT

Date: _____

Attn: DABC Licensing & Compliance Section

_____ (City)(Town)(County) hereby grants its consent to
the establishment of a package liquor agency for _____
operated by _____ and located
at _____ pursuant to the provisions of Section
32A-3, Utah Code, for the purpose of storage and sale of liquor, wine and heavy beer in
unopened containers for off-premise consumption. Furthermore, said organization has met all
ordinances relating to issuance of local business license(s).

☐ *Check if applicable*

LOCAL CONSENT FOR PROXIMITY VARIANCE

In accordance with Utah Code 32A-3-101(3), the local authority
also grants consent to a variance regarding the proximity of this
establishment relative to a public or private school, church,
public library, public playground, or park.

Authorized Signature

Print Name / Title

**UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
PACKAGE AGENCY LIQUOR BOND**

BOND #_____

KNOW ALL PERSONS BY THESE PRESENTS:

That **principal**, _____, a liquor package agency, doing business as _____, and **surety**, _____, a corporation organized and existing under the laws of the state of _____ and authorized to do business in Utah, are held and bound unto the Department of Alcoholic Beverage Control in the sum of \$1,000, for which payment will be made, we hereby bind ourselves and our representatives, assigns, and successors firmly by these presents.

Dated this _____ day of _____, _____.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above principal has made application to the Utah Alcoholic Beverage Control Commission for a liquor package agency pursuant to the provisions of 32A-3, Utah Code.

NOW, THEREFORE, if said principal, its officers, agents and employees shall faithfully comply with the provisions of Title 32A, Utah Code, and the rules and directives of the Department of Alcoholic Beverage Control, then this bond shall be void; but, if said principal, its officers, agents and employees fail to comply with the provisions of the laws, rules, and directives or orders as the department or commission may issue, then this bond shall be in full force and effect and payable to the Department of Alcoholic Beverage Control. This bond shall run for a continuing term effective _____ unless canceled by service of written notice upon the Department of Alcoholic Beverage Control, which cancellation shall be effective 30 days after receipt of such notice; provided however, that no part of this bond shall be withdrawn or canceled while violations, legal actions or proceedings are pending against said agency/principal.

Surety

Principal

Attorney in fact

Authorized Signature

Name/Title

STATUTORY AFFIDAVIT FOR CORPORATE SURETY

STATE OF _____

COUNTY OF _____

On the _____ day of _____, _____, personally appeared before me,
_____, who being by me duly sworn, did say that he/she is the attorney in fact of
_____, **surety**, and that said instrument was signed in behalf of said surety by
authority, and acknowledged to me that he/she as such attorney in fact executed the same.

Notary Public

Note: Corporate surety's own affidavit also acceptable.

PACKAGE AGENCY APPLICATION EVALUATION FACTORS

The Department of Alcoholic Beverage Control and Alcoholic Beverage Control Commission will utilize the following factors for package agency contract application evaluation:

1. Density of liquor availability in area.
2. Days and hours of operation.
3. Nature of business agency associated with.
4. Size of retail sales and storage space.
5. Parking and public and delivery access.
6. Length of time in operation.
7. Management experience:
 - a. Liquor
 - b. Financial
8. Population and traffic area.
9. Tourist traffic.
10. Compliance relative to the alcoholic beverage laws and rules.
11. Public input.

INFORMED CONSENT AND RELEASE OF LIABILITY

PURPOSE: To determine, in accordance with Utah Code 32A-1-702 and 32A-1-703, if an applicant with the Department of Alcoholic Beverage Control has been:

- convicted of a felony under federal or state law;
- convicted of a violation of a federal law, state law, or local ordinance concerning the sale, manufacture, distribution, warehousing, or transportation of an alcoholic beverage;
- convicted of a crime involving moral turpitude;
- convicted on two or more occasions within the previous five years, driving under the influence of alcohol, a drug, or the combined influence of alcohol and a drug.

RELEASE

I hereby authorize the Department of Alcoholic Beverage Control (DABC) to investigate my criminal history records to ascertain any and all information which may be pertinent to my qualifications as an applicant with the DABC. The release of any and all information is authorized whether it is of record or not, and I do hereby release all persons, firms, agencies, companies, groups or installations, whomsoever, from any damages of or resulting from, furnishing such information to the DABC. I further agree that a copy of this release will remain in my application file.

Name (please print; last, first, middle initial)

Formerly used last names (please print)

Applicant/ doing business as

Signature

Date

(suggested attestation/stipulation letter to the DABC for a third-party national criminal background check)

Date: _____

To whom it may concern:

I, _____, attest:

- 1. That I have submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s) by the F.B.I.**
- 2. That I am not aware of any criminal conviction that would disqualify me from applying for and holding a Utah Department of Alcoholic Beverage Control license or permit.**

I stipulate that if an F.B.I. report shows a criminal conviction that would disqualify me from holding the license, permit, or package agency, I shall immediately surrender the license, permit, or package agency to the department.

I am enclosing a national criminal history background report from a third party background check reporting service.

Signature

Name/Title

Sales Tax Information for Licensed Retailers

The prices of liquor, wine, and heavy beer at the liquor stores and package agencies do not include sales tax. Licensed retailers (licensees) and certain permit holders will now be able to purchase liquor from the department without paying the sales tax.

The DABC Commission has established rules for liquor ordering procedures for licensees and permit holders that must be followed. The liquor stores will no longer charge sales tax to licensees and certain permit holders who order by following these procedures.

See below for an explanation of the liquor order procedures.

The sales tax will be added at the cash register when members of the general public shop in a liquor store or package agency and bring their purchases to the cash register. Licensees and permit holders that make purchases at the cash register will be charged sales tax just like the general public.

Sales Tax Information for Package Agencies

Package agencies (Types 1,2,3,4,and 5) that buy liquor from the department (liquor store or warehouse) for resale will now be able to purchase it without paying the sales tax. Each package agency will be responsible for collecting the sales tax at the register and remitting it directly to the State Tax Commission. If package agencies have any questions about this procedure, contact Amy Hill at the Tax Commission at 801-297-2200.

Sales Tax Exemption Certificate

Licensees and Package Agencies that buy liquor, wine, and heavy beer from the DABC must file tax commission form TC-721 with the DABC.

A copy of this form is enclosed.

Once filed, the licensee and package agency can buy liquor, wine, and heavy beer exempt from sales tax at any DABC owned and operated state liquor store.

If a licensee buys from a local package agency that is a "contracted store" (not owned or operated by the DABC), the licensee has to file form TC-721 *with the package agency* in order to be able to purchase "sales tax exempt".

Liquor Order Procedures

(1) Commission rule requires that a licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check, cashier's check, or debit card with a PIN.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

An on-line ordering account may be set up by contacting Tammy Bolte at 977-6800



Utah State Tax Commission
Exemption Certificate
(Sales, Use, Tourism and Motor Vehicle Rental Tax)

TC-721
Rev. 5/06

Name of business or institution claiming exemption (purchaser)		Telephone Number	
Street Address	City	State	ZIP Code
Authorized Signature	Name (please print)	Title	
Name of Seller or Supplier: Department of Alcoholic Beverage Control		Date	

The person signing this certificate **MUST** check the applicable box showing the basis for which the exemption is being claimed. Questions should be directed (preferably in writing) to Taxpayer Services, Utah State Tax Commission, 210 N 1950 W, Salt Lake City, UT 84134. Telephone (801) 297-2200, or toll free 1-800-662-4335.

DO NOT SEND THIS CERTIFICATE TO THE TAX COMMISSION
Keep it with your records in case of an audit.

Sales tax account numbers with an "H" prefix are not to be used for tax-free purchases for resale or re-lease.

RESALE OR RE-LEASE

Sales Tax License No. _____

I certify I am a dealer in tangible personal property or services that is for resale or re-lease. If I use or consume any tangible personal property or services I purchase tax free for resale, or if my sales are of food, beverages, dairy products and similar confections dispensed from vending machines (see Rule R865-19S-74), I will report and pay sales tax on the proper cost thereof directly to the Tax Commission on my next regular sales and use tax return.

COMMERCIAL AIRLINES

I certify the food and beverages purchased are by a commercial airline for in-flight consumption; or, any parts or equipment purchased are for use in aircraft operated by common carriers in interstate or foreign commerce.

RELIGIOUS OR CHARITABLE INSTITUTION

Sales Tax Exemption No. N _____

I certify the tangible personal property or services purchased will be used or consumed for essential religious or charitable purposes. This exemption can only be used on purchases totaling \$1,000 or more, unless the sale is pursuant to a contract between the seller and purchaser.

To be valid this certificate must be filled in completely, including a check mark in the proper box.

A sales tax license number is required only where specifically indicated.

Please sign, date and, if applicable, include your license or exemption number.

NOTE TO SELLER: Keep this certificate on file since it must be available for audit review.

NOTE TO PURCHASER: Keep a copy of this certificate for your records. You are responsible to notify the seller of cancellation, modification, or limitation of the exemption you have claimed.

DO NOT SEND THIS CERTIFICATE TO THE TAX COMMISSION

TITLE 32A - ALCOHOLIC BEVERAGE CONTROL ACT

(Updated through May 2008)

Chapter 3 - Package Agencies

32A-3-101. Commission's power to establish package agencies -- Limitations.

(1) (a) The commission may, when it considers necessary, create a package agency by entering into a contractual relationship with a person to sell liquor in sealed packages from premises other than those owned or leased by the state.

(b) The commission shall authorize a person to operate a package agency by issuing a certificate from the commission that designates the person in charge of the agency as a "package agent" as defined under Section **32A-1-105**.

(2) (a) Subject to this Subsection (2), the total number of package agencies may not at any time aggregate more than that number determined by dividing the population of the state by 18,000.

(b) For purposes of Subsection (2)(a), population shall be determined by:

(i) the most recent United States decennial or special census; or

(ii) another population determination made by the United States or state governments.

(c) (i) The commission may establish seasonal package agencies established in areas the commission considers necessary.

(ii) A seasonal package agency shall be for a period of six consecutive months.

(iii) A package agency established for operation during a summer time period is known as a "Seasonal A" package agency. The period of operation for a "Seasonal A" agency shall:

(A) begin on May 1; and

(B) end on October 31.

(iv) A package agency established for operation during a winter time period is known as a "Seasonal B" package agency. The period of operation for a "Seasonal B" agency shall:

(A) begin on November 1; and

(B) end on April 30.

(v) In determining the number of package agencies that the commission may establish under this section:

(A) a seasonal package agency is counted as 1/2 of one package agency; and

(B) each "Seasonal A" agency shall be paired with a "Seasonal B" agency.

(d) (i) If the location, design, and construction of a hotel may require more than one package agency sales location to serve the public convenience, the commission may authorize a single package agent to sell liquor at as many as three locations within the hotel under one package agency if:

(A) the hotel has a minimum of 150 guest rooms; and

(B) all locations under the agency are:

(I) within the same hotel facility; and

(II) on premises that are managed or operated and owned or leased by the package agent.

(ii) A facility other than a hotel may not have more than one sales location under a single package agency.

(3) (a) Except as provided in Subsection (3)(b), (c), or (d), the premises of a package agency may not be established:

(i) within 600 feet of a community location, as measured by the method described in Subsection (3)(e); or

(ii) within 200 feet of a community location, measured in a straight line from the nearest entrance of the proposed package agency to the nearest property boundary of the community location.

(b) With respect to the establishment of a package agency, the commission may authorize a variance to reduce the proximity requirement of Subsection (3)(a)(i) if:

(i) the local authority grants its written consent to the variance;

(ii) the commission finds that alternative locations for establishing a package agency in the community are limited;

(iii) a public hearing is held in the city, town, or county, and where practical in the neighborhood concerned;

(iv) after giving full consideration to all of the attending circumstances and the policies stated in Subsections **32A-1-104**(3) and (4), the commission determines that establishing the package agency would not be detrimental to the public health, peace, safety, and welfare of the community; and

(v) (A) the community location governing authority gives its written consent to the variance; or

(B) when written consent is not given by the community location governing authority, the commission finds

that the applicant has established that:

(I) there is substantial unmet public demand to consume alcohol within the geographic boundary of the local authority in which the package agency is to be located;

(II) there is no reasonably viable alternative for satisfying substantial unmet demand described in Subsection (3)(b)(v)(B)(I) other than through the establishment of a package agency; and

(III) there is no reasonably viable alternative location within the geographic boundary of the local authority in which the package agency is to be located for establishing a package agency to satisfy the unmet demand described in Subsection (3)(b)(v)(B)(I).

(c) With respect to the establishment of a package agency, the commission may authorize a variance that reduces the proximity requirement of Subsection (3)(a)(ii) if:

(i) the community location at issue is:

(A) a public library; or

(B) a public park;

(ii) the local authority grants its written consent to the variance;

(iii) the commission finds that alternative locations for establishing a package agency in the community are limited;

(iv) a public hearing is held in the city, town, or county, and where practical in the neighborhood concerned;

(v) after giving full consideration to all of the attending circumstances and the policies stated in Subsections **32A-1-104**(3) and (4), the commission determines that establishing the package agency would not be detrimental to the public health, peace, safety, and welfare of the community; and

(vi) (A) the community location governing authority gives its written consent to the variance; or

(B) when written consent is not given by the community location governing authority, the commission finds that the applicant has established that:

(I) there is substantial unmet public demand to consume alcohol within the geographic boundary of the local authority in which the package agency is to be located;

(II) there is no reasonably viable alternative for satisfying substantial unmet demand described in Subsection (3)(c)(vi)(B)(I) other than through the establishment of a package agency; and

(III) there is no reasonably viable alternative location within the geographic boundary of the local authority in which the package agency is to be located for establishing a package agency to satisfy the unmet demand described in Subsection (3)(c)(vi)(B)(I).

(d) With respect to the premises of a package agency issued by the commission that undergoes a change of ownership, the commission may waive or vary the proximity requirements of Subsection (3)(a) in considering whether to grant a package agency to the new owner of the premises if:

(i) (A) the premises previously received a variance reducing the proximity requirement of Subsection (3)(a)(i); or

(B) the premises received a variance reducing the proximity requirement of Subsection (3)(a)(ii) on or before May 4, 2008; or

(ii) a variance from proximity requirements was otherwise allowed under this title.

(e) The 600 foot limitation described in Subsection (3)(a)(i) is measured from the nearest entrance of the package agency by following the shortest route of ordinary pedestrian travel to the property boundary of the community location.

(4) (a) Nothing in this section prevents the commission from considering the proximity of any educational, religious, and recreational facility, or any other relevant factor in reaching a decision on a proposed location.

(b) For purposes of Subsection (4)(a), "educational facility" includes:

(i) a nursery school;

(ii) an infant day care center; and

(iii) a trade and technical school.

(5) (a) The package agent, under the direction of the department, is responsible for implementing and enforcing this title and the rules adopted under this title to the extent they relate to the conduct of the package agency and its sale of liquor.

(b) A package agent may not be, or construed to be, a state employee nor be otherwise entitled to any benefits of employment from the state.

(c) A package agent, when selling liquor from a package agency, is considered an agent of the state only to the extent specifically expressed in the package agency agreement.

(6) The commission may prescribe by policy, directive, or rule, consistent with this title, general operational requirements of all package agencies relating to:

- (a) physical facilities;
- (b) conditions of operation;
- (c) hours of operation;
- (d) inventory levels;
- (e) payment schedules;
- (f) methods of payment;
- (g) premises security; and
- (h) any other matters considered appropriate by the commission.

32A-3-102. Application requirements.

(1) A person seeking to operate a package agency as a package agent under this chapter shall file a written application with the department in a form prescribed by the department.

(2) The application shall be accompanied by:

- (a) a nonrefundable application fee of \$100;
- (b) written consent of the local authority;
- (c) evidence of proximity to any community location, with proximity requirements being governed by Section

32A-3-101;

(d) a bond as specified by Section **32A-3-105**;

(e) a floor plan of the premises, including a description and highlighting of that part of the premises in which the applicant proposes that the package agency be established;

(f) evidence that the package agency is carrying public liability insurance in an amount and form satisfactory to the department;

(g) a signed consent form stating that the package agent will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the package agency;

(h) in the case of an applicant that is a partnership, corporation, or limited liability company, proper verification evidencing that the person or persons signing the package agency application are authorized to so act on behalf of the partnership, corporation, or limited liability company; and

(i) any other information as the commission or department may direct.

32A-3-103. QUALIFICATIONS.

(1) (a) The commission may not grant a package agency to any person who has been convicted of:

- (i) a felony under any federal or state law;
- (ii) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;
- (iii) any crime involving moral turpitude; or
- (iv) on two or more occasions within the five years before the day on which the package agency is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug.

(b) In the case of a partnership, corporation, or limited liability company, the proscription under Subsection (1)(a) applies if any of the following has been convicted of any offense described in Subsection (1)(a):

- (i) a partner;
- (ii) a managing agent;
- (iii) a manager;
- (iv) an officer;
- (v) a director;
- (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(vii) a member who owns at least 20% of the applicant limited liability company.

(c) The proscription under Subsection (1)(a) applies if any person employed to act in a supervisory or managerial capacity for a package agency has been convicted of any offense described in Subsection (1)(a).

(2) The commission may immediately suspend or revoke the package agency and terminate the package agency agreement if after the day on which the package agency is granted a person described in Subsection (1)(a), (b), or (c):

(a) is found to have been convicted of any offense described in Subsection (1)(a) prior to the package agency being granted; or

- (b) on or after the day on which the package agency is granted:
 - (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or
 - (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug; and
 - (B) was convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A).
- (3) The director may take emergency action by immediately suspending the operation of the package agency for the period during which the criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):
 - (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii); or
 - (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug; and
 - (ii) was convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug within five years before the day on which the person is arrested on a charge described in Subsection (3)(b)(i).
- (4) (a) (i) The commission may not grant a package agency to any person who has had any type of license, agency, or permit issued under this title revoked within the last three years.
- (ii) The commission may not grant a package agency to any applicant that is a partnership, corporation, or limited liability company if any partner, managing agent, manager, officer, director, stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation, or member who owns at least 20% of the applicant limited liability company is or was:
 - (A) a partner or managing agent of any partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;
 - (B) a managing agent, officer, director, or stockholder who holds or held at least 20% of the total issued and outstanding stock of any corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or
 - (C) a manager or member who owns or owned at least 20% of any limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.
- (b) An applicant that is a partnership, corporation, or limited liability company may not be granted a package agency if any of the following had any type of license, agency, or permit issued under this title revoked while acting in that person's individual capacity within the last three years:
 - (i) any partner or managing agent of the applicant partnership;
 - (ii) any managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or
 - (iii) any manager or member who owns at least 20% of the applicant limited liability company.
- (c) A person acting in an individual capacity may not be granted a package agency if that person was:
 - (i) a partner or managing agent of a partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;
 - (ii) a managing agent, officer, director, or stockholder who held at least 20% of the total issued and outstanding stock of a corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or
 - (iii) a manager or member who owned at least 20% of the limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.
- (5) (a) Each package agency shall be operated by a natural person, who is either:
 - (i) the package agent; or
 - (ii) another natural person that package agent designates.
- (b) Each designee shall be:
 - (i) an employee of the package agent; and
 - (ii) responsible for the operation of the agency.
- (c) The conduct of the designee shall be attributable to the package agent.
- (d) The package agent shall provide the name of the person operating the package agency to the department for the department's approval.
- (e) The name and title of any designee shall be stated on the application for the package agency.
- (f) The package agent shall:
 - (i) inform the department of any proposed change in the person designated to operate the agency; and

(ii) receive prior approval from the department before implementing the change as described in this Subsection (5)(f).

(g) Failure to comply with the requirements of this Subsection (5) may result in the immediate termination of the package agency agreement.

(6) (a) A minor may not be:

(i) granted a package agency; or

(ii) employed by a package agent to handle liquor.

(b) The commission may not grant a package agency to an applicant that is a partnership, corporation, or limited liability company if any of the following is a minor:

(i) a partner or managing agent of the applicant partnership;

(ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(iii) a manager or member who owns at least 20% of the applicant limited liability company.

(7) If any package agent no longer possesses the qualifications required by this title for obtaining a package agency, the commission may terminate the package agency contract.

32A-3-104. COMMISSION AND DEPARTMENT DUTIES BEFORE ESTABLISHING.

(1) Before a package agency may be established by the commission, the department shall conduct an investigation and may hold public hearings for the purpose of gathering information and making recommendations to the commission to assure appropriate service to the general population of the state. This information shall be forwarded to the commission to aid in its determination.

(2) Before establishing a package agency, the commission shall:

(a) determine that the applicant has complied with all basic qualifications and requirements for making application for a package agency as provided by Sections 32A-3-102 and 32A-3-103, and that the application is complete;

(b) determine that the agency facility complies with all existing zoning ordinances of the locality where the agency will be located;

(c) consider the locality within which the proposed package agency will be located, including but not limited to:

(i) physical characteristics such as condition of the premises, square footage, parking, and delivery access; and

(ii) operational factors such as tourist traffic, proximity to and density of other state stores, package agencies, and outlets, access to the public, proximity to residential communities, demographics, population to be served, the nature of surrounding establishments, and the extent of and proximity to educational, religious, and recreational facilities;

(d) consider the applicant's ability to manage and operate a package agency, including but not limited to, management experience, past retail liquor experience, the type of establishment or business in which the agency may be located, hours of operation, and ability to maintain inventory levels as set by the department; and

(e) consider any other factors or circumstances it considers necessary.

32A-3-105. BOND.

(1) (a) Each package agent having a consignment liquor inventory owned by the state shall have a consignment surety bond payable to the department in the amount of the consignment inventory.

(b) The bond shall be conditioned upon the agent's return of all unsold liquor upon termination of the agency agreement.

(2) (a) Each package agent owning his own liquor inventory shall post a cash or corporate surety bond in the penal sum of \$1,000 payable to the department, which the package agent has procured and shall maintain for so long as the package agent continues to operate. The bond shall be in an amount fixed by the department and in a form approved by the attorney general.

(b) The bond shall be conditioned upon the faithful compliance of the package agent with this title, the rules adopted by the commission under this title, and the provisions of the package agency agreement.

32A-3-106. Operational restrictions.

(1) (a) A package agency may not be operated until a package agency agreement has been entered into by the package agent and the department.

(b) The agreement shall state the conditions of operation by which the package agent and the department are bound.

(c) If the package agent violates the conditions, terms, or covenants contained in the agreement or violates any provisions of this title, the department may take whatever action against the agent that is allowed by the package agency agreement.

(d) Actions against the package agent are governed solely by the agreement and may include suspension or revocation of the agency.

(2) (a) A package agency may not purchase liquor from any person except from the department.

(b) At the discretion of the department, liquor may be provided by the department to a package agency for sale on consignment.

(3) The department may pay or otherwise remunerate a package agent on any basis including sales or volume of business done by the agency.

(4) Liquor may not be sold from any package agency except in a sealed package. The package may not be opened on the premises of a package agency.

(5) All liquor sold shall be in packages that are properly marked and labeled in accordance with the rules adopted under this title.

(6) A package agency may not display liquor or price lists in windows or showcases visible to passersby.

(7) (a) An officer, agent, clerk, or employee of a package agency may not consume or allow to be consumed by any person any alcoholic beverage on the premises of a package agency.

(b) Violation of this Subsection (7) is a class B misdemeanor.

(8) Liquor may not be sold except at prices fixed by the commission.

(9) Liquor may not be sold, delivered, or furnished to any:

(a) minor;

(b) person actually, apparently, or obviously intoxicated;

(c) known habitual drunkard; or

(d) known interdicted person.

(10) (a) Subject to Subsection (10)(b), sale or delivery of liquor may not be made on or from the premises of any package agency nor may any package agency be kept open for the sale of liquor:

(i) (A) on Sunday; or

(B) on a state or federal legal holiday; and

(ii) except on days and during hours as the commission may direct by rule or order.

(b) The restrictions in Subsection (10)(a)(i) govern unless:

(i) the package agency is located at a winery licensed under Chapter 8, Manufacturing Licenses;

(ii) the winery licensed under Chapter 8, Manufacturing Licenses, holds:

(A) a restaurant liquor license under Chapter 4, Part 1, Restaurant Liquor Licenses; or

(B) a limited restaurant license under Chapter 4, Part 3, Limited Restaurant Licenses;

(iii) the restaurant described in Subsection (10)(b)(ii) is located at the winery;

(iv) the restaurant described in Subsection (10)(b)(ii) sells wines produced at the winery;

(v) the winery described in Subsection (10)(b)(i):

(A) owns the restaurant; or

(B) operates the restaurant;

(vi) the package agency only sells wine produced at the winery; and

(vii) the package agency's days and hours of sale are the same as the days and hours of sale at the restaurant described in Subsection (10)(b)(ii).

(c) (i) In addition to the requirements of Subsection (10)(a), the sale or delivery of liquor may not be made on or from the premises of a package agency described in Subsection (10)(c)(ii) and a package agency described in Subsection (10)(c)(ii) may not be open for the sale of liquor until after the polls are closed:

(A) on a day on which is held:

(I) a regular general election;

(II) a regular primary election; or

(III) a statewide special election; or

(B) on a day on which is held a municipal, local district, special service district, or school election if:

(I) the package agency is within the boundaries of the municipality, local district, special service district, or school district holding the election; and

(II) the municipality, local district, special service district, or school district in which the election is held notifies the department at least 30 days before the day on which the election is held.

(ii) This Subsection (10)(c) applies to a package agency that contracts with the department to sell liquor in a manner similar to a state store, whether or not the operator of the package agency has a source of income that is not from the sale of liquor.

(iii) The commission may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, define what constitutes a package agency that sells liquor "in a manner similar to a state store."

(11) The package agency certificate issued by the commission shall be permanently posted in a conspicuous place in the package agency.

(12) Each package agent shall display in a prominent place in the package agency a sign in large letters stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(13) (a) A package agency may not close or cease operation for a period longer than 72 hours, unless:

(i) the package agency notifies the department in writing at least seven days before the closing; and

(ii) the closure or cessation of operation is first approved by the department.

(b) Notwithstanding Subsection (13)(a), in the case of emergency closure, immediate notice of closure shall be made to the department by telephone.

(c) (i) The department may authorize a closure or cessation of operation for a period not to exceed 60 days.

(ii) The department may extend the initial period an additional 30 days upon written request of the package agency and upon a showing of good cause.

(iii) A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) The notice required by Subsection (13)(a) shall include:

(i) the dates of closure or cessation of operation;

(ii) the reason for the closure or cessation of operation; and

(iii) the date on which the agency will reopen or resume operation.

(e) Failure of the agency to provide notice and to obtain department authorization prior to closure or cessation of operation shall result in an automatic termination of the package agency contract effective immediately.

(f) Failure of the agency to reopen or resume operation by the approved date shall result in an automatic termination of the package agency contract effective on that date.

(14) Liquor may not be stored or sold in any place other than as designated in the package agent's application, unless the package agent first applies for and receives approval from the department for a change of location within the package agency premises.

(15) (a) Except to the extent authorized by commission rule, a minor may not be admitted into, or be on the premises of a package agency unless accompanied by a person who is:

(i) 21 years of age or older; and

(ii) the minor's parent, legal guardian, or spouse.

(b) Any package agent or employee of the package agency that has reason to believe that a person who is on the premises of a package agency store is under the age of 21 and is not accompanied by a person described in Subsection (15)(a) may:

(i) ask the suspected minor for proof of age;

(ii) ask the person who accompanied the suspected minor for proof of age; and

(iii) ask the suspected minor or the person who accompanied the suspected minor for proof of parental, guardianship, or spousal relationship.

(c) Any package agent or employee of a package agency shall refuse to sell liquor to the suspected minor and to the person who accompanied the suspected minor into the package agency if they fail to provide any of the information specified in Subsection (15)(b).

(d) Any package agent or employee of a package agency shall require the suspected minor and the person who accompanied the suspected minor into the package agency to immediately leave the premises of the package agency if they fail to provide any of the information specified in Subsection (15)(b).

(16) A package agency may not transfer its operations from one location to another without prior written approval of the commission.

(17) (a) A person, having been granted a package agency, may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the package agency to any other person, whether for monetary gain or not.

(b) A package agency has no monetary value for the purpose of any type of disposition. **32A-3-107.**

DELIVERY OF LIQUOR TO PACKAGE AGENCIES.

(1) Liquor to be sold from a package agency may be lawfully transported from any warehouse or state store authorized by the department to the package agency. Transportation may be done by any common carrier or other person authorized by the department to transport the liquor to the package agency.

(2) A common carrier or other person, while in or about any vehicle in which liquor is being transported, may not open, break, or allow to be opened or broken, any package containing liquor. A person may not drink, use, or allow to be drunk or used, any liquor while it is in transit under this section.

32A-3-108. RETURN OF INVENTORY.

Any liquor previously received from the department on consignment that remains unsold at the time the package agent's package agency agreement terminates for any reason, shall be immediately returned to the department or the liquor is subject to immediate seizure by the department.

R81. Alcoholic Beverage Control, Administration.

R81-3. Package Agencies

R81-3-1. Definition.

Package agencies are retail liquor outlets operated by private persons under contract with the department for the purpose of selling packaged liquor from facilities other than state liquor stores for off premise consumption. Package agencies are classified into five types:

Type 1 - A package agency under contract with the department which is operated in conjunction with a resort environment (e.g., hotel, ski lodge, summer recreation area).

Type 2 - A package agency under contract with the department which is in conjunction with another business where the primary source of income to the operator is not from the sale of liquor.

Type 3 - A package agency under contract with the department which is not in conjunction with another business, but is in existence for the sole purpose of selling liquor.

Type 4 - A package agency under contract with the department which is located within a facility approved by the commission for the purpose of selling and delivering liquor to tenants or occupants of specific rooms which have been leased, rented, or licensed within the same facility. A type 4 package agency shall not be open to the general public.

(proposed rule) Type 5 - A package agency under contract with the department which is located within a winery, distillery, or brewery that has been granted a [winery] manufacturing license by the commission.

The commission may grant type 4 package agency privileges to a type 1 package agency.

R81-3-2. Change of Location.

Any change of package agency location must be requested in writing and approved in advance by the commission.

R81-3-3. Bonds.

No part of any surety bond required in Section 32A-3-105, may be withdrawn during the time the package agency contract is in effect. If the package agent fails to maintain a valid surety bond, the package agency contract shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in an automatic rescission of the package agency contract.

R81-3-4. Change of Package Agent.

Pursuant to Section 32A-3-106(16), any change of the package agent designated in the department's package agency agreement is a violation of these rules and shall result in the immediate termination of the package agency contract.

R81-3-5. Special Orders of Liquor by Public.

(1) Purpose. A special order product is any product not listed on the department's product/price list. This rule outlines the procedures for accepting, processing, ordering and disbursing special orders.

(2) Application of Rule.

(a) Only type 2 and 3 package agencies may process special order requests.

(b) Any individual may place a special order at any type 2 or 3 package agency. Special orders may be placed by groups of individuals, organizations, or retail licensees either at a type 2 or 3 package agency or with the purchasing division of the department. A special order shall be processed as follows:

(i) A special order form must be filled out and signed by the customer for each special order product purchased. The package agency shall forward the form to the department's purchasing division.

(ii) Special orders may be ordered only by the case, not by the bottle. There is no handling fee on special orders.

(iii) Customers should be advised to allow at least two months between processing and delivery of a special order.

(iv) Special orders for beer will be subject to availability and according to the distributor's shipping criteria.

(v) If a group, organization, or retail licensee places a special order, they may designate a particular package agency or state store to which they want the special order items to be sent. They shall include the name and telephone number of the individual who will pick up and pay for the special order product at that location.

(vi) A special order must include the product name and distributor or shipper.

(vii) The department's special order buyer shall obtain a retail bottle price and call the customer and/or package agent for clearance to proceed with the order.

(viii) When the special order arrives, the package agency or state store to which the special order has been sent shall immediately notify the customer, and the customer shall pick up the order as soon as possible after notification. The customer shall pay for and pick up the entire special order. The package agency or state store is not allowed to warehouse special ordered products. All merchandise must be cleared from the system before a reorder on that special order item is allowed.

(ix) Special orders may only be placed by customers. Package agencies may not place a special order unrelated to a particular customer as a means to sell unlisted products to the general public.

(x) Special orders of beer, wine or spirits with lower prices than quoted to the department on products handled by or similar to products handled by the department will be allowed only on two conditions:

(A) the department has the opportunity to purchase the same product at the same price; or

(B) the individual, group of individuals, organization, or retail licensee name is part of the design of the front label found on the product.

R81-3-6. Liquor Returns, Refunds and Exchanges.

(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges.

(2) Application of Rule.

(a) Unsaleable Product. Unsaleable product includes product that is spoiled, leaking, contains foreign matter, or is otherwise defective. The department will accept for refund or exchange liquor merchandise that is unsaleable subject to the following conditions and restrictions:

(i) Returns of unsaleable merchandise are subject to approval by the package agent to verify that the product is indeed defective.

(ii) The product must be returned within a reasonable time of the date of purchase. Discontinued products may not be returned. Vintages of wine that are not currently being retailed by the department may not be returned.

(iii) All returned product must have the state stamp attached to each bottle.

(iv) No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation, or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.

(v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.

(b) Saleable Product. Package agents are authorized to accept saleable returned merchandise from licensees, single event permit holders, convention groups, and individual customers, subject to the following conditions and restrictions:

(i) Returns of saleable merchandise are subject to approval by the package agent. The customer may receive a refund or exchange of product for the return. Large returns will be accepted from licensees, single event permittees, convention groups and other organizations only if prior arrangements have been made with the package agent.

(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition with a state stamp attached to every bottle. Returns of \$50.00 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all

purchases of \$50.00 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.

(iii) Wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted back with caution. These products can only be returned if the package agent has personal knowledge of how they have been handled and stored.

(iv) If the total amount of the return is more than \$500 the package agent shall fill out a "Returned Merchandise Acknowledgment Receipt" (LQ-45), and submit a copy to the office. A refund check will be processed at the office and mailed to the customer. Customers need to be informed that it generally takes three to six weeks to process payment.

(v) If the total value of the returned merchandise is more than \$1,000, a 10% restocking fee shall be charged on the total amount.

(c) Unreturnable Products. The following items may not be returned:

(i) All limited item wines - wines that are available in very limited quantities.

(ii) Any products that have been chilled, over-heated, or label-damaged.

(iii) Outdated (not listed on the department's product/price list) and discontinued products.

(iv) Merchandise purchased by catering services.

(v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.

(d) A cash register return receipt shall be completed for each product return. The following information must be on the receipt: the customer's name, address, telephone number, driver's license number, and signature. The cashier must attach the receipt to the cash register closing report.

R81-3-7. Warning Sign.

All package agencies shall display in a prominent place a "warning sign" as defined in R81-1-2.

R81-3-8. Identification Guidelines to Purchase Liquor.

All package agencies shall accept only four forms of identification to establish proof of age for the purchase of liquor by customers :

(1) A current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(2) A current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, Identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(3) A current valid military identification card that includes date of birth and has a picture affixed; or

(4) a current valid passport.

If a person's age is still in question after presenting proof of age, the package agency may require the person to also sign a "statement of age" form as provided in 32A-1-303. The form shall be filed alphabetically by the close of the business day, and shall be maintained on file for a period of three years.

R81-3-9. Promotion and Listing of Products.

(1) An operator or employee of a Type 1, 2, or 3 package agency, as defined in R81-3-1, may not promote a particular brand or type of liquor product while on duty at the package agency. An operator or employee may inform a customer as to the characteristics of a particular brand or type of liquor, provided the information is linked to a comparison with other brands or types.

(2) A package agency may not advertise alcoholic beverages on billboards except:

(a) a Type 1 package agency, as defined in R81-3-1, may provide informational signs on the premises of the hotel or resort directing persons to the location of the hotel's or resort's Type 1 package agency;

(b) a Type 2 package agency, as defined in R81-3-1, may provide informational signs on the premises of its business directing persons to the location of the Type 2 package agency within the business; and

(proposed rule)(c) A Type 5 package agency, as defined in R81-3-1, may advertise the location of the winery, distillery, or brewery and the Type 5 package agency, and may advertise the alcoholic beverage products produced by the winery, distillery, or brewery and sold at the Type 5 package agency under the guidelines of R81-1-17 for advertising alcoholic beverages.

(3) A package agency may not display price lists in windows or showcases visible to passersby except:

(a) a Type 1 package agency, as defined in R81-3-1, may provide a price list in each guest room of the hotel or resort containing the code, number, brand, size and price of each item it carries for sale at the Type 1 package agency;

(b) a Type 4 package agency, as defined in R81-3-1, may provide a price list of the code number, brand, size, and price of each item it carries for sale to the tenants or occupants of the specific leased, rented, or licensed rooms within the facility; and

(proposed rule)(c) A Type 5 package agency, as defined in R81-3-1, may provide a price list on the premises of the winery, [~~winery tasting room,~~] distillery, or brewery, authorized tasting room, and at the entrance of the Type 5 package agency of the code, number, brand, size, and price of each liquor item it carries for sale at the Type 5 package agency.

R81-3-10. Non-Consignment Inventory.

Type 1, 4 and 5 package agencies shall be on a non-consignment inventory status where the agency owns the inventory.

R81-3-11. Application.

An application for a package agency shall be included in the agenda of the monthly commission meeting for consideration for issuance of a package agency contract when the requirements of Sections 32A-3-102, -103, and -105 have been met, a completed application has been received by the department, and when the package agency premises have been inspected by the department. No application fee is required for Type 2 and 3 package agency applicants.

R81-3-12. Evaluation Guidelines of Package Agencies.

Type 2 and 3 package agencies shall:

(1) serve a population of at least 6,000 people comprised of both permanent residents and tourists;

(2) not be established or maintained within a one mile radius of another type 2 or 3 package agency unless it can be clearly demonstrated that it is in the best interest of the state to establish and maintain the outlet at that location; and

(3) maintain a gross profit to the state of \$12,000 annually to assure adequate service to the public.

R81-3-13. Operational Restrictions.

(1) Hours of Operation.

(a) Type 1, 2, and 5 package agencies may operate from 10:00 a.m. until 12:00 midnight, Monday through Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department. Type 2 agencies shall be open for business at least seven hours a day, five days a week, except where closure is otherwise required by law.

(b) Type 3 package agencies may operate from 10:00 a.m. until 10:00 p.m., Monday through Saturday, but may remain closed on Mondays in the discretion of the package agent. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department, provided the agency operates at least seven hours a day.

(c) Type 4 package agencies may operate from 10:00 a.m. until 1:00 a.m., Monday through Friday, and 10:00 a.m. until 12:00 midnight on Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department.

(d) Any change in the hours of operation of any package agency requires prior department approval, and shall be submitted in writing by the package agent to the department.

(proposed rule)(e) A package agency, regardless of type, shall not operate on Sundays~~[-]~~ or legal holidays ~~[and election days where the sale of alcoholic beverages is prohibited by law until the polls have closed]~~ except to the extent authorized by 32A-3-106(10) for package agencies located in certain wineries. If a legal holiday falls on a Sunday, the following Monday will be observed as the holiday by Type 2 and 3 package agencies.

(f) Because Type 2 and 3 package agencies operate in a manner similar to a state store, they may not be open to sell liquor on election days until after the polls have closed. Type 1, 4, and 5 package agencies do not operate in a manner similar to a state store and may remain open to sell liquor on election days.

(2) Size of Outlet. The retail selling space devoted to liquor sales in a type 2 or 3 package agency must be at least one hundred square feet.

(3) Inventory Size. Type 2 and 3 package agencies must maintain at least fifty code numbers of inventory at a retail value of at least five thousand dollars and must maintain a representative inventory by brand, code, and size.

(4) Access to General Public. Type 1, 2, and 3 package agencies must be easily accessible to the general consuming public.

(5) Purchase of Inventory. All new package agencies, at the discretion of the department, will purchase and maintain their inventory of liquor.

R81-3-14. Type 5 Package Agencies.

(proposed rule)(1) Purpose. A type 5 package agency is for the limited purpose of allowing a winery, distillery, or brewery to sell at its ~~[winery]~~ manufacturing location the packaged ~~[wine]~~ liquor product it actually produces to the general public for off-premise consumption. This rule establishes guidelines and procedures for type 5 package agencies.

(2) Application of Rule.

(a) The package agency must be located on the winery, distillery, or brewery premises at a location approved by the commission.

(b) The package agency may only sell products produced at the winery, distillery, or brewery and may not carry the products of other alcoholic beverage manufacturers.

(c) The product produced by the winery, distillery, or brewery and sold in the type 5 package agency need not be shipped from the winery, distillery, or brewery to the department warehouse and then back to the package agency. The bottles for sale may be moved directly from the ~~[winery]~~ manufacturer's storage area to the package agency provided that proper record-keeping is maintained on forms provided by the department. Records required by the department shall be kept current and available to the department for auditing purposes. Records must be maintained for at least three years. The package agency shall submit to the department a completed monthly sales report form which specifies the variety and number of bottles sold from the package agency. This report must be submitted to the department within the first five working days of the month. A club or restaurant purchases form must be filled out for every licensee purchase.

(d) Direct deliveries to licensees are prohibited. ~~[Wines]~~ Product must be purchased and picked up by the licensees or their designated agents at the Type 5 package agency.

(e) The type 5 package agency shall follow the same laws, rules, policies, and procedures applicable to other package agencies as to the retail price of products.

(f) The days and hours of sale of the type 5 package agency shall be in accordance with 32A-3- 106(10).

R81-3-15. Refusal of Service.

An employee of the package agency may refuse to sell liquor to any person whom the employee has reason to believe is purchasing or attempting to purchase liquor in violation of the Utah Alcoholic Beverage Control laws. The employee may also detain the person and hold the person's form of identification in a reasonable manner and for a reasonable length of time for the purpose of informing a peace officer of a suspected violation.

R81-3-16. Minors on Premises.

No person under the age of 21 years may enter a package agency unless accompanied by a parent, legal guardian, or spouse that is 21 years of age or older. Signs notifying the public of this rule shall be posted in a prominent place on the doors or windows of the package agency.

R81-3-17. Consignment Inventory Package Agencies.

(1) Purpose. At the discretion of the department, liquor may be provided by the department to a Type 2 and Type 3 package agency for sale on consignment pursuant to 32A-3-106(2)(b). This rule provides the procedures for such consignment sales.

(2) Application of the Rule.

(a) Consignment Inventory.

(i) The initial amount of consignment inventory furnished to the package agency shall be established by the department's regional manager assigned to the package agency.

(ii) The consignment inventory amount shall be posted to the department's accounting system as "Consignment Inventory Account."

(iii) The consignment inventory amount shall be stated in the department's contract with the package agency.

(iv) Any adjustment to the consignment inventory amount shall be done through the use of a transfer, authorization, or payment of money. A copy of the transfer, adjusting authorization, or evidence of payment shall be included in the package agency's file.

(v) The consignment inventory amount may be adjusted from time to time based on the package agency's monthly average sales. Any adjustment shall be made by a properly executed amendment to the department's contract with the package agency.

(b) Payments.

(i) After receipt of a shipment of merchandise, the package agent shall submit a check to the department within 30 days of the authorization/transfer date.

(ii) The check shall be annotated with the authorization, transfer and credit memo numbers to which it applies as follows: Authorization(s) + or - transfers - credit memos = check.

(iii) All delivery discrepancies shall be resolved immediately by contacting the department's warehouse shipping manager. Payment shall be made on all authorizations/transfers by their due date whether or not any discrepancies have been resolved.

(iv) Any returned checks to the department from a package agent is grounds to require the package agent to provide a certified check to pay for future shipments.

(v) If a check for an authorization is not received by the department within 30 days of its due date, the department may assess the legal rate of interest on the amount owed, or may terminate the contract with the package agent and close the package agency.

(c) Transfers.

(i) Transfers (+ or -) shall be adjusted to the package agency's next payment due the department.

(ii) Transfer in will add to the amount owed to the department on the next check due to the department.

(iii) Transfer out will subtract from the amount owed to the department on the next check due to the department.

(d) Audits.

(i) Any package agency that is on a consignment contract shall keep a daily log of sales.

(ii) The regional manager shall audit the package agency at least once every six months.

- (iii) The package agency is subject to a department audit at any time.

R81-3-18. Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales.

(1) Purpose. Pursuant to 32A-1-116, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters, except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter “mini-bottles” of distilled spirits and 187 milliliter bottles of wine for room service sales by Type 4 package agencies located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

(2) Application of Rule.

(a) The department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from a Type 4 package agency. Special orders may be placed with the department’s purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The Type 4 package agency must order in full case lots, and all sales are final.

(c) If the hotel/resort has a Type 1 package agency with Type 4 privileges, the smaller bottle sized products must be stored in a secure area separate from the Type 1 agency inventory.

(d) Sale and use of alcohol in the smaller bottle sizes is restricted to providing room service to guests in sleeping rooms in the hotel/resort, and may not be used for other purposes, or be sold to the general public.

(e) Failure of the Type 4 package agency to strictly adhere to the provisions of this rule is grounds for the department to terminate its contract with the Type 4 package agency.

R81-3-19 Credit Cards.

(1) Purpose. This rule explains the procedures to be followed by consignment package agents in accepting credit cards for the purchase of alcoholic beverages.

(2) Application of Rule.

(a) Licensee purchases may not be paid by credit card. The department will accept only checks and cash from licensees.

(b) Refunds, or exchanges of products of unequal value, will be handled by crediting the customer’s credit card account. The cash register must be balanced by doing a return at the register.

(c) The cashier shall examine the security features of the card such as signatures, account numbers, expiration date, hologram, etc., before accepting any card.

(d) No sale may be made without the credit card. Merely having the credit card number available is not acceptable.

(e) All credit cards must be signed by the card holder.

(f) Customers may not use another person’s credit card, including their spouse’s card.

(g) Credit card receipts contain confidential information that needs to be safeguarded. Cashiers should not throw them in the trash. Consignment package agents and their employees should consult their regional manager concerning proper storage and disposal of such receipts.

(h) If for any reason the credit card cannot be scanned, the credit card number should be hand keyed into the credit card machine keyboard. An imprinted copy of the credit card must then be made. The imprinted copy must be signed by the card holder.